



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO. 067443-702	FILING DATE 05/26/99	FIRST NAMED INVENTOR NEXT	ATTORNEY DOCKET NO. 067443-702
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HM32/1005

EXAMINER FIDERSER, D
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ART UNIT 1044	PAPER NUMBER
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DATE MAILED: 10/05/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**

Application No.

08/443,982

Applicant(s)

Dixit et al.

Examiner

David S. Romeo 5/87  
David S. Romeo

Group Art Unit

1646



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 4 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on 7-19-99 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Claim 2 raises new issues with respect to the function of the analog. Applicants simultaneously requested that claim 57 be canceled and submitted an amended claim 57. Claims 57 and 58 raise new issues.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See the Attachment to the Advisory Action

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: 23 and 46

Claims rejected: 1-5, 21, 29, 30, 37-43, 45, 48, 49, 54-58, and 60

Claims restricted: 53, 59

- ☒ The proposed drawing correction filed on 7-19-99 ☒ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☐ Other

*Elizabeth C. Kemmerer*

ELIZABETH KEMMERER  
PRIMARY EXAMINER

Art Unit: 1646

*Attachment to the Advisory Action (Paper No. 33)*

1. Claim(s) 29, 30, 57, 58 and 60 would remain rejected under 35 U.S.C. § 112, first paragraph if the proposed amendment had been entered. Applicants' arguments have been fully considered but they are not persuasive. There are no structural limitations to the "FADD protein or polypeptide". See claim 29, lines 1-2; claim 30, lines 1-2; proposed claim 58, line 2.

2. Claim 45 would remain rejected under 35 U.S.C. § 112, first paragraph. Applicants' arguments have been fully considered but they are not persuasive. The specification does not appear to support the concept of conservative amino acid substitutions in the claimed mutein.

3. Claims 1-5, 21, 29, 30, 37-39, 41-43, 48, 49, 54-58 and 60 would remain rejected under 35 U.S.C. § 112, second paragraph, over the recitation of "FADD". Applicants' arguments have been fully considered but they are not persuasive. The specification does not identify that material element or combination of elements which is unique to, and, therefore, definitive of "FADD" and an artisan cannot determine what additional or material functional limitations are placed upon a claim by the presence of this element.

4. Proposed claim 57 recites the limitation "how the agent modulates apoptosis" in line 2 of claim 57. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 1646

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Romeo whose telephone number is (703) 305-4050. The examiner can normally be reached on Monday through Friday from 6:45 a.m. to 3:15 p.m.

5 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703) 308-4310.

Official papers filed by fax should be directed to (703) 308-4242.

Faxed draft or informal communications should be directed to the examiner at (703) 308-0294.

10 Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Elizabeth C. Kemmerer*

ELIZABETH KEMMERER  
PRIMARY EXAMINER

dsr *ASR*  
August 8, 1999